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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

STATE OF VERMONT
DEPARTMENT OF SOCIAL AND
REHABILITATION SERVICES,
Petitioner

v.

UNITED STATES HEALTH
AND HUMAN SERVICES AGENCY,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REPLY BRIEF OF PETITIONER

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OCTOBER TERM, 1986

NO. 86-745

STATE OF VERMONT
DEPARTMENT OF SOCIAL AND
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ARGUMENT

Respondent's Brief In Opposition alleges that Petitioner is not entitled to judicial review of Petitioner's equitable arguments because Petitioner did not seriously pursue the remand remedy before the Second Circuit Court

of Appeals. Respondent's Brief, p. 7, fn. 6. Respondent further alleges that judicial review of Petitioner's equitable arguments is not warranted because Petitioner's equitable arguments are "makeweight" or frivolous efforts which Petitioner never seriously pursued over the various levels of this litigation. Resp. Br., p. 9-10. These two assertions by Respondent, which constitute virtually the entire sum and substance of Respondent's argument against direct Supreme Court review and/or remand to the District Court of Petitioner's equitable theories of relief, totally misrepresent the Record of this case.

Contrary to Respondent's claims, Petitioner fully briefed the legal and factual grounds supporting Vermont's request for remand before the Second Circuit. See, Second Circuit Record, Brief for the Appellee, p. 7, 22-23, 26-27; Supplemental Brief for the Appellee, p. 1-20; Petition for Rehearing and Suggestion that Rehearing be in Banc, p. 1-2,

7-14. Furthermore, most of the 900 page Health and Human Services Agency Grant Appeals Board Record is devoted to factual evidence and legal argument which Petitioner has advanced in support of Petitioner's equitable arguments. Grant Appeals Board Record 1, 31-183, 231-513, 548-889. In addition, the Briefs submitted by Petitioner at every level of this case clearly advance Petitioner's equitable arguments as serious theories of relief.

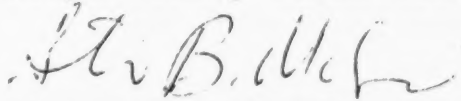
Finally, it should be noted that Petitioner's original eligibility was not determined by mere self-certification as alleged by Respondent. Resp. Br., p. 4, 11. Rather, Petitioner's original eligibility resulted from self-certification and full review and approval of said self-certification by Respondent. Petitioner's Appendix, p. 24a-25a. Consequently, Respondent's arguments against Petitioner's estoppel claims and Respondent's analogy to tax audits

are based on an erroneous assumption and,
therefore, are groundless.

CONCLUSION

For the foregoing reasons, Petitioner renews the request for this Court to grant the relief requested by Petitioner in the previously submitted Petition for Writ of Certiorari.

Respectfully submitted,



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